

## **Document 2b**

# Memorandum

Northeast Regional Office, Philadelphia, PA  
FEDERAL BUREAU OF PRISONS

DATE: July 27, 2004

REPLY TO  
ATTN OF: Henry J. Sadowski, Regional Counsel

SUBJECT: Your Administrative Tort Claim, No. TRT-NER-2004-01997

TO: Anthony George Allen, Reg. No. 40428-053  
FCI McKean

Your Administrative Tort Claim No. TRT-NER-2004-01997, properly received by this agency on February 12, 2004, has been considered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. You seek compensatory damages in the amount of \$5,000,000.00 for an alleged personal injury. Specifically, you claim you are being exposed to second-hand smoke while incarcerated at the Federal Correctional Institution (FCI), McKean, Pennsylvania, causing you medical problems now and will cause you various illnesses in the future.

After careful review of this claim, I have decided not to offer a settlement. Investigation reveals policy states all Bureau of Prisons' facilities and vehicles are no-smoking areas, unless specifically designated as a smoking area by the Warden. The Warden is required to designate an outdoor area as a smoking area and may, but is not required to, designate a limited number of indoor smoking areas, where the needs of effective operations so require. The Warden at FCI McKean has designated the upper cells of each housing unit and one cell on each lower range for handicap inmates as indoor smoking areas. Inmates found smoking in prohibited areas are subject to disciplinary action. Staff make every effort to enforce the no-smoking rules. The Warden has taken reasonable steps to ensure that inmates at that facility are not exposed to second-hand smoke. Your medical record does not indicate you suffer from the injuries you describe in this claim or that you have complained about smoke-exposure-related symptoms. You are encouraged to promptly advise staff when you observe others smoking in areas not designated by the Warden. There is no evidence to suggest you have experienced a personal injury as the result of negligence on the part of any Bureau of Prisons' employee.

Accordingly, your claim is denied. If you are dissatisfied with this decision, you may seek reconsideration from this office or bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this memorandum.

cc: James F. Sherman, Warden, FCI McKean